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**REDACTED – FOR PUBLIC INSPECTION**

***VIA COURIER***

November 9, 2009

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: *In the Matter of a National Broadband Plan for Our Future*, GN Docket No. 09-51  
*In the Matter of International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act*, GN Docket No. 09-47  
*In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137

Dear Ms. Dortch:

Qwest Communications International Inc. (Qwest) is filing today in the above-referenced dockets Comments in response to the FCC's September 23, 2009 Public Notice #5 (DA 09-2093) concerning the adoption and deployment of broadband on Tribal lands. Qwest seeks confidential treatment of its submission in GN Docket No. 09-51 pursuant to the October 8, 2009 Protective Order (DA 09-2187). Qwest has marked each page of its submission with confidential information as follows: **"CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION"**. Each page of the redacted version of its submission is marked **"REDACTED – FOR PUBLIC INSPECTION"**. This cover letter contains no confidential information and is included (with the same text except for the markings) with both the non-redacted and redacted versions of the submission. Pursuant to paragraph 7 of the

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Protective Order in GN Docket No. 09-51, two copies of the non-redacted version (with confidential information) are to be delivered either to Elvis Stumbergs (Room 2-C125) or Simon Banyai (Room 4-C458) of the Media Bureau of the Federal Communications Commission at 445 12<sup>th</sup> Street, S.W., Washington, DC 20554. For the non-redacted version of the submission, Qwest is submitting via courier one copy with the Office of the Secretary, along with an additional copy to be stamped and returned to the courier. Qwest is filing the redacted version of its submission (which omits the confidential information) via the FCC's Electronic Comment Filing System.

Qwest also seeks confidential treatment of its submission in GN Docket Nos. 09-47 and 09-137 pursuant to 47 C.F.R. §§ 0.457 and 0.459, for which it provides justification in the attached Appendix. Qwest considers the information in its Comments to be confidential trade secret, commercial information that is "not routinely available for public inspection." 47 C.F.R. § 0.457(d). For GN Docket Nos. 09-47 and 09-137, Qwest has marked each page of its submission with confidential information as follows: **"CONFIDENTIAL – NOT FOR PUBLIC INSPECTION - PURSUANT TO 47 C.F.R. SECTIONS 0.457 AND 0.459 FOR GN DOCKET NOS. 09-47 AND 09-137"**. As previously noted regarding GN Docket No. 09-51, each page of the redacted version of Qwest's submission is marked **"REDACTED – FOR PUBLIC INSPECTION"**. For GN Docket Nos. 09-47 and 09-137, Qwest is filing with the Office of the Secretary, via courier, one copy of the non-redacted version its Comments in each proceeding, along with an additional copy to be stamped and returned to the courier. The redacted version of Qwest's Comments (which omits the confidential information) is being filed, in each proceeding, via the FCC's Electronic Comment Filing System.

Please contact me at 303-383-6650 if you have any questions.

/s/ Laurel L. Burke

Attachments

Two copies of the non-redacted version for delivery to:  
Elvis Stumbergs or Simon Banyai

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**APPENDIX**

Confidentiality Request and Justification

Qwest requests confidential treatment of its Comments-NBP Public Notice #5 in GN Docket No. 09-51, pursuant to the Protective Order, released October 8, 2009 (DA 09-2187), as well as confidential treatment of the Comments in GN Docket Nos. 09-47 and 09-137 pursuant to 47 C.F.R. § 0.457(d) and § 0.459.

47 C.F.R. § 0.457(d)

Qwest considers information contained in its Comments to be confidential and proprietary as “trade secrets” and/or “commercial information” or is otherwise confidential under Section 0.457(d) and the October 8, 2009 Protective Order, which defines “Confidential Information” (at paragraph 5) as that “contained in Confidential Documents or derived therefrom that is not otherwise available from publicly available sources.” Disclosure of such information to the public would risk revealing company-sensitive proprietary commercial information. Therefore, in the normal course of Commission practice this information should be considered “Records not routinely available for public inspection.”

47 C.F.R. § 0.459

Specific information included with this submission is also subject to protection under 47 C.F.R. § 0.459, as demonstrated below.

Information for which confidential treatment is sought

Qwest requests that its submission containing confidential information be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. The submission contains sensitive trade secrets and/or commercial or other information which Qwest maintains as proprietary and/or confidential and is not normally made available to the public. Release of the information could have a substantial negative competitive impact on Qwest. The confidential version of Qwest’s Comments is marked with the following legend: **“CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION”** and **“CONFIDENTIAL – NOT FOR PUBLIC INSPECTION - PURSUANT TO 47 C.F.R. SECTIONS 0.457 AND 0.459 FOR GN DOCKET NOS. 09-47 AND 09-137”**.

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Commission proceeding in which the information was submitted

The filing is being submitted in *In the Matters of a National Broadband Plan for Our Future*, GN Docket No. 09-51; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137; *International Comparison and Consumer Survey Requirement in the Broadband Data Improvement Act*, GN Docket No. 09-47.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The information designated as confidential contains sensitive trade secrets and/or commercial or other information which Qwest maintains as proprietary and withholds from public inspection. This information is not normally made available to the public. Release of the information could have a substantial negative competitive impact on Qwest.

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

The type of sensitive trade secrets and/or confidential commercial or other information includes percentage figures as to the deployment of broadband facilities by Qwest on Tribal lands within its local exchange service territory. This sensitive, proprietary internal Qwest information would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)), which demonstrates that the Commission already anticipates that the release of this kind of information likely would produce competitive harm. Qwest confirms that release of this confidential information would cause it competitive harm by allowing competitors to become aware of sensitive trade secrets and/or confidential commercial or other information regarding the operation of Qwest's business as it relates to the deployment of broadband services.

Measures taken by Qwest to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

Qwest has treated and treats the information disclosed in its Comments as confidential and has protected it from public disclosure to parties outside of the company.

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Justification of the period during which Qwest asserts that the material should not be available for public disclosure

Qwest cannot determine at this time any date on which this information should not be considered confidential or would become stale for purposes of the current action, except that the information would be handled in conformity with general Qwest records retention policies, absent any continuing legal hold on the data.

Other information that Qwest believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable Commission and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) trade secrets or commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matters of	)	
	)	
International Comparison and Consumer Survey	)	GN Docket No. 09-47
Requirements in the Broadband Data	)	
Improvement Act	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Inquiry Concerning the Deployment of Advanced	)	GN Docket No. 09-137
Telecommunications Capability to All Americans	)	
in a Reasonable and Timely Fashion, and Possible	)	
Steps to Accelerate Such Deployment Pursuant to	)	
Section 706 of the Telecommunications Act of	)	
1996, as Amended by the Broadband Data	)	
Improvement Act	)	

**COMMENTS-NBP PUBLIC NOTICE #5  
OF QWEST COMMUNICATIONS INTERNATIONAL INC.**

**I. INTRODUCTION AND SUMMARY**

In these comments, Qwest Communications International Inc. (Qwest) responds to certain of the questions posed in the Broadband Deployment and Adoption on Tribal Lands NBP (National Broadband Plan) Public Notice #5, issued by the Commission in the above-referenced proceedings on September 23, 2009 (NBP Public Notice #5).<sup>1</sup> Through that notice, the Commission seeks to identify barriers to broadband deployment and adoption in Tribal lands as well as to determine how to effectively eliminate or reduce the impact of those barriers.<sup>2</sup>

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<sup>1</sup> Comment Sought on Broadband Deployment and Adoption on Tribal Lands, GN Docket Nos. 09-47, 09-51, 09-137, NBP Public Notice # 5, DA 09-2093 (Sept. 23, 2009).

<sup>2</sup> Consistent with the Commission's use in the NBP Public Notice #5, Qwest uses the terms "Tribal lands," "Indian Country," and "Tribal areas" interchangeably. *Id.* at nn. 1, 7.

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As Qwest noted in its NBP NOI comments, in areas where broadband service is not currently available, the Commission should recognize that deployment has not been supported by market opportunities.<sup>3</sup> And as the Commission notes in the NBP Public Notice #5, the “typically low population density and sometimes difficult terrain” of Tribal areas has resulted in a reluctance by carriers and broadband providers to reach out to serve subscribers.

This practical reality means thought has to be given to the costs, including those for rights of way (ROW), and the underlying economic inefficiencies inherent in deployment in these areas. Because the stimulus funding available from the ARRA is unlikely to resolve these cost concerns by itself, the Commission should consider a program that supports broadband deployment in unserved areas, including Tribal lands and without infringing on the sovereignty of the Tribal lands. And, since the unserved areas are often also encumbered by a lack of resources, a pilot program for all “low income” customers including those on Tribal lands, might be undertaken to encourage deployment and subsequent adoption of broadband.

In these comments, Qwest offers responses to several of the questions posed by drawing on its experiences as a telecommunications and broadband services provider.

## **II. DISCUSSION**

### **A. Limited Quantitative Data and Experience Point to a Need for Cooperation Among Parties for Successful Deployment**

It’s no secret that where the population density is lower, so too is broadband penetration to households. In thirteen of the fourteen states within Qwest’s local exchange service territory,

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<sup>3</sup> Comments of Qwest Communications International Inc., GN Docket No. 09-51 (June 8, 2009) at 2 (NBP NOI Comments).

the population density is significantly lower than in the rest of the United States. While broadband services are available to eighty-six percent (86%) of the living units in its region, reaching the remaining fourteen percent (14%) has been encumbered by the low population density and the terrain associated with the many rural areas which substantially increases the actual costs of deployment of services -- whether telecommunications services or broadband services.

Historically, Qwest has provided telecommunications services to Tribal areas. And, unfortunately, in some cases, customers have ordered service and not been able to receive service immediately because no facilities were available. When Tribal lands are involved, those facilities most often are not available due to complicated ROW issues. The lesson learned from experience teaches that resolving the ROW issues requires everyone to work together. Leaders must understand the impact of ROW constraints and fees on a business' ability to provide service and also engage other community leaders, the applicable agencies and businesses so that customers have access to services and upgrades are available.

As explained in its NBP Public Notice #7 comments, Qwest has significant experience working with local and state governments to upgrade and deploy broadband.<sup>4</sup> Qwest has found that state and local governments are best positioned to attract private capital and promote the successful deployment of sustainable broadband infrastructure and services when they: aggregate and leverage state and local government demand for communications services; enact or modify local ordinances and regulations to encourage private sector investment (*e.g.*,

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<sup>4</sup> Comments-NBP Public Notice #7 of Qwest Communications International Inc., GN Docket Nos. 09-51, 09-47, 09-137 (Nov. 6, 2009) at 3-4.



ordinances and regulations concerning ROW access, utility pole attachments and access to conduits, construction fees, facilities relocation cost assignment, and franchise fees and conditions); provide targeted construction subsidies to private sector service providers to reduce the cost of network upgrades and build-outs; and collaborate with private sector service providers to drive increased demand. These same observations might be extended to work on Tribal lands.

While not directly related to Tribal lands, Qwest's recent experiences participating in the broadband infrastructure grant programs of two of its states, Idaho<sup>5</sup> and Utah, illustrate the merits of public-private partnerships to expand broadband infrastructure to unserved areas.<sup>6</sup> These successful broadband infrastructure programs were grant programs. Virtually all areas in the U.S. without broadband are so situated because no substantial subsidization supported building out services to the area. Some form of partnership with Tribal lands may prove useful in creating additional opportunities.

Qwest provides services to seventy-nine Tribal lands. Twenty-four (24) of those areas fall wholly within Qwest service territory. However, no actual voice service level penetration data is available since the number of households in a particular area is unknown to Qwest and the

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<sup>5</sup> The Idaho program was particularly successful due to the engagement of the Department of Commerce and Labor (DCL) which issued a program guide containing the rules within 60 days of the program's legislation being enacted. The DCL reviewed applications within 30 days of the application submission deadline. Qwest's proposal included 53 separate projects totaling \$7,543,900. Qwest and Idaho each provided 50% of the project cost (\$3,771,950). Each project was defined on a community-by-community basis. Collectively, the projects brought broadband infrastructure and services to over 30,000 homes and businesses in many of Idaho's smallest and most rural communities.

<sup>6</sup> Comments-NBP Public Notice #7 of Qwest at 2-8.

number of telephone subscribers can not be isolated to a specific Tribal area by a unique identifier. Unless a customer provides the information directly, Qwest does not know if a service order relates to Tribal lands, because a given NPA/NXX is not exclusive to the area and central offices may serve more than just the identified Tribal land. Likewise, Qwest also has no insight or relevant data relating to the number of Tribal anchor institutions passed by its own services much less another provider's. That said, in its region, Qwest broadband facilities pass almost **\*\*\*BEGIN CONFIDENTIAL\*\*\*[REDACTED]\*\*\*END CONFIDENTIAL\*\*\*** living units on the Bureau of Indian Affairs Tribal lands with broadband facilities. Of those living units, **\*\*\*BEGIN CONFIDENTIAL\*\*\*[REDACTED]\*\*\*END CONFIDENTIAL\*\*\*** are qualified at less than 1.5 MB/sec. About **\*\*\*BEGIN CONFIDENTIAL\*\*\*[REDACTED]\*\*\*END CONFIDENTIAL\*\*\*** qualify at 7 MB/sec. Almost **\*\*\*BEGIN CONFIDENTIAL\*\*\*[REDACTED]\*\*\*END CONFIDENTIAL\*\*\*** qualify for speeds between 7 Meg and 40 Meg. Roughly **\*\*\*BEGIN CONFIDENTIAL\*\*\*[REDACTED]\*\*\*END CONFIDENTIAL\*\*\*** qualify for 40 MB/sec. Qwest does not know the specific take rate for these services since customer accounts are identified by telephone number and no Tribal lands have unique NPA/NXXs assigned.

While there have been advancements, no doubt, as the Commission has noted, many Tribal lands remain unserved. Significant additional broadband deployment to unserved areas,

including Tribal lands, requires sufficient business incentive which is not present without grant funding as explained more fully in Qwest's recent NBP PN #11 comments.<sup>7</sup>

## **B. Role of Broadband Service Providers**

### **1. Broadband Initiatives Should Not Promote Public Ownership of Broadband Networks**

Generally, Qwest does not support public ownership of communications infrastructure on Tribal lands or otherwise.<sup>8</sup> Private investment brings long-term advantages to states, local communities, and tax payers by growing the tax base and exposing tax payers to less risk. The most effective infrastructure initiatives are those that favor the provision of broadband service by private companies rather than agency or government providers for whom the provision of broadband service has not traditionally been considered a core function. And in Tribal areas, the effectiveness of deployment by these private companies will depend on understanding the community dynamics, partnering with local leaders to find solutions for rights of way challenges and finding the specific support mechanisms for customers that encourage adoption.

### **2. Pilot Programs to Support Broadband Services for Low-Income Customers, including Those on Tribal lands, Make Sense**

The question is how to create programs that make more affordable broadband services available to low-income consumers, including those consumers on Tribal lands, and increase

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<sup>7</sup> Comments-NBP Public Notice #11 of Qwest Communications International Inc., GN Docket Nos. 09-47, 09-51, 09-137 (Nov. 4, 2009) at 4-9.

<sup>8</sup> The exception occurs when there is a market failure and an inability on the part of government to take corrective or mitigating actions (*e.g.*, removal of unreasonable/unnecessary regulatory barriers or subsidization of infrastructure investment) that provides incentive for private sector investment.

both broadband penetration to and use by those consumers. The Commission should concentrate on expanding broadband to unserved Tribal areas through a competitive bidding mechanism such as the one offered by Qwest in its *NOI* comments,<sup>9</sup> and should consider a pilot program for supporting broadband to low-income customers.<sup>10</sup>

As the Commission has previously proposed, a pilot program could be an effective way to start this effort. Although set forth in its comments to the *NOI* previously, Qwest reiterates the programs should: (1) consider permitting provider participation without requiring broadband availability throughout the provider's participating service areas, (2) consider not requiring providers to sell equipment they do not otherwise provide when offering their broadband Internet access services in order to participate in the program, (3) analyze existing rates for broadband Internet access service to evaluate what support amounts will provide "affordable" broadband Internet access service for qualifying low-income customers, and (4) focus on program outreach efforts to and by state, local and tribal agencies and provide funding to support cooperative outreach and streamlined enrollment processes. These support programs should be technology neutral for providers -- eligibility criteria should not be based on the type (*e.g.*, wireline or wireless) of provider but rather on the ability to deploy the necessary infrastructure and services.

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<sup>9</sup> NBP NOI Comments at 11-14.

<sup>10</sup> Qwest has previously explained how providing universal service support for broadband deployment without designating broadband as a "supported service" under Section 254(c) is in accord with the Commission's legal authority under the Act. *See ex parte* letter from C. Brown, Qwest to M. Dortch, FCC, CC Docket No. 96-45, filed Aug. 14, 2007 and attached *ex parte* letter from M. Newman, Qwest to Commissioner Deborah Taylor Tate, FCC, dated Aug. 9, 2007, at 2-5 of 6.

Additionally, any pilot program on Tribal lands could also be designed to evaluate whether and how subsidizing recurring subscription costs for broadband service, subsidizing fixed costs of obtaining computer equipment, and consumer education increases broadband penetration among Tribal consumers. This type of pilot program could actually consist of three separate programs -- (1) support that subsidizes the recurring broadband service rate, (2) support that subsidizes the customer equipment needed to access broadband service, and (3) an Internet education program -- with different provider participants across the programs. Providers could choose to participate in one or more of the programs as eligibility criteria for each program permitted.

Once there is some experience with operating broadband networks in very high-cost areas with differing population densities and with providing subsidized broadband services to low-income customers, the Commission can work with the pilot program communities to evaluate these programs and determine the next steps. The Commission can also evaluate whether or to what extent support is needed for broadband operational costs in high-cost areas, and whether or what type of support is needed to increase and sustain use of broadband services by low-income consumers.

### **III. CONCLUSION**

To acquire meaningful data and begin getting broadband to unserved areas, Qwest supports technology neutral pilot programs. Such programs, developed in a cooperative manner between affected agencies, communities and businesses, provide the means to evaluate the effectiveness of broadband adoption and deployment in Tribal lands.

Respectfully submitted,

QWEST COMMUNICATIONS  
INTERNATIONAL, INC.

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Its Attorneys

November 9, 2009

CERTIFICATE OF SERVICE

I, Joan O'Donnell, do hereby certify that I have caused: 1) one hard copy (in each docket) of the foregoing **COMMENTS-NBP PUBLIC NOTICE #5 OF QWEST COMMUNICATIONS INTERNATIONAL INC. (NON-REDACTED)** to be filed with the Office of the Secretary in GN Docket Nos. 09-51, 09-47 and 09-137; 2) an electronic copy (in each docket) of the foregoing **COMMENTS-NBP PUBLIC NOTICE #5 OF QWEST COMMUNICATIONS INTERNATIONAL INC. (REDACTED)** to be filed via the FCC's Electronic Comment Filing System; 3) two hard copies of the foregoing **COMMENTS-NBP PUBLIC NOTICE #5 OF QWEST COMMUNICATIONS INTERNATIONAL INC. (NON-REDACTED)** to be delivered either to Elvis Stumbergs or Simon Banyai of the Media Bureau of the FCC; and 4) an electronic copy of the foregoing **COMMENTS-NBP PUBLIC NOTICE #5 OF QWEST COMMUNICATIONS INTERNATIONAL INC. (REDACTED)** to be served via email on the FCC's duplicating contractor, Best Copy and Printing, Inc. at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

/s/ Joan O'Donnell

November 9, 2009